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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217625
Party	Defendant ELLIOT H Cohen
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BIG FRONT DOOR, LLC,	)	Opposition No.: 91217625
	)	Serial No.: 86224809
Opposer,	)	
vs.	)	<b>ANSWER AND AFFIRMATIVE</b>
	)	<b>DEFENSES TO AMENDED NOTICE OF</b>
ELLIOT H. COHEN,	)	<b>OPPOSITION</b>
	)	
Applicant.	)	
	)	
	)	

Elliot Cohen ("Applicant"), the owner of and applicant named in intent-to-use application (i) Serial No. 86224809 for the mark "BFD", filed on March 18, 2014 and published for opposition on July 29, 2014, for restaurants in International Class 043, by and through his undersigned counsel, files this Answer to the Amended Notice of Opposition ("Opposition") filed by opposer, Big Front Door, LLC ("Opposer") on October 14, 2014, and pleads as follows:

**ANSWER TO NOTICE OF OPPOSITION**

In response to the introductory unnumbered paragraph of the Opposition, Applicant admits that the mark "BFD" is the subject of application Serial No. 86224809; denies that Opposer will be damaged by registration of Applicant's mark as set forth in his application; and states that he is without knowledge or information sufficient to form a belief as to the truth of the

1 remaining allegations of the first, unnumbered paragraph. Applicant responds to the separately  
2 numbered paragraphs of the Opposition as follows:

3 1. In response to the allegations in paragraph 1 of the Opposition, Applicant admits  
4 the allegations set forth therein, adding that to the best of Applicant's knowledge, Applicant's  
5 application with Serial No. 86224809 was filed earlier on March 18, 2014 than the Opposer's  
6 application with Serial No. 86224960, noting further that Applicant's application has a lower  
7 number than Opposer's application as referred in this paragraph 1.  
8

9 2. Applicant admits the allegations in paragraph 2 of the Opposition.

10 3. Applicant denies that the submission by Opposer comports with the requirements  
11 of 37 CFR Section 2.122(d) as the submitted material by Opposer was not for registrations of  
12 Opposer's marks, but rather for pending applications.  
13

14 4. Applicant admits the allegations in paragraph 4 of the Opposition.

15 5. Applicant admits the allegations in paragraph 5 of the Opposition.

16 6. Applicant admits the allegations in paragraph 6 of the Opposition.

17 7. Applicant admits the allegations in paragraph 7 of the Opposition.

18 8. Applicant admits the allegations in the first sentence of paragraph 8 of the  
19 Opposition. Applicant denies the allegations in the second sentence of paragraph 8 of the  
20 Opposition to the extent they concern Opposer's alleged damages. Applicant does not contest  
21 Opposer's standing as alleged in the second sentence of paragraph 8 of the Opposition.  
22

23 9. Applicant admits the allegations in paragraph 9 of the Opposition.

24 10. In response to the allegations in paragraph 10 of the Opposition, Applicant is  
25 without knowledge or information sufficient to form a belief as to the truth of each and every  
26 statement or allegation contained therein.  
27  
28

1           11.     In response to the allegations in paragraph 11 of the Opposition, Applicant is  
2 without knowledge or information sufficient to form a belief as to the truth of each and every  
3 statement or allegation contained therein; provided however, that Applicant denies that Opposer  
4 has made use of either or both of the marks set forth in application Serial Nos. 86224960 and  
5 86225653 prior to Applicant's constructive use of the mark set forth in his application, Serial No.  
6 86224809.  
7

8           12.     In response to the allegations in paragraph 12 of the Opposition, Applicant is  
9 without knowledge or information sufficient to form a belief as to the truth of each and every  
10 statement or allegation contained therein.  
11

12           13.     In response to the allegations in paragraph 13 of the Opposition, Applicant is  
13 without knowledge or information sufficient to form a belief as to the truth of each and every  
14 statement or allegation contained therein.  
15

16           14.     In response to the allegations in paragraph 14 of the Opposition, Applicant denies  
17 each and every allegation contained therein.  
18

19           15.     In response to the allegations in paragraph 15 of the Opposition, Applicant denies  
20 each and every allegation contained therein.  
21

22           16.     In response to the allegations in paragraph 16 of the Opposition, Applicant denies  
23 each and every allegation contained therein.  
24

25           17.     Applicant admits the allegations in paragraph 17 of the Opposition.

26           18.     Applicant admits the allegations in paragraph 18 of the Opposition.

27           19.     Applicant admits the allegations in paragraph 19 of the Opposition.

28           20.     In response to the allegations in paragraph 20 of the Opposition, Applicant denies  
each and every allegation contained therein.

1           21.     In response to the allegations in paragraph 21 of the Opposition, Applicant is  
2 without knowledge or information sufficient to form a belief as to the truth of each and every  
3 statement or allegation contained therein.

4           22.     In response to the allegations in paragraph 22 of the Opposition, Applicant denies  
5 each and every allegation contained therein.

6  
7           23.     In response to the allegations in paragraph 23 of the Opposition, Applicant denies  
8 each and every allegation contained therein. Applicant denies that Opposer will be damaged by  
9 registration of Applicant's mark, denies that Opposer's marks have priority over Applicant's  
10 mark, and denies that Applicant's application for registration of Applicant's mark should be  
11 denied.

12  
13                               FIRST DEFENSE

14           24.     As to Applicant's First Defense, Opposer has not pleaded any law or facts that  
15 justify a refusal to register Applicant's application, and consequently, Opposer has failed to state  
16 a claim upon which relief can be granted.

17  
18                               SECOND DEFENSE

19           25.     As to Applicant's Second Defense, Opposer has failed to establish that  
20 Applicant's mark "consists of or comprises a mark that so resembles a mark registered in the  
21 Patent and Trademark Office, or a mark or trade name previously used in the United States by  
22 another and not abandoned, as to be likely, when used on or in connection with the goods of the  
23 Applicant, to cause confusion, or to cause mistake, or to deceive." (*quoting* 15 U.S.C.A. § 1052).

24  
25           26.     Opposer has failed to establish that Opposer used a mark or trade name in the  
26 United States that is likely to cause confusion, mistake, or to deceive the public as to an  
27 association with Applicant's mark because Opposer's alleged uses of the names and/or marks  
28

1 “BFD Big Front Door” and “BFD” do not qualify as uses granting common law or federal law  
2 rights and protections in said names.

3 27. Alternatively, Opposer has failed to establish that Opposer used a mark or trade  
4 name in the United States that is likely to cause confusion, mistake, or to deceive the public as to  
5 an association with Applicant’s mark because the services used in connection with the parties’  
6 respective marks are distinctively different to preclude any finding that consumers would believe  
7 that the services associated with Applicant’s mark would fall within the normal fields of  
8 expansion for Opposer’s alleged goods and/or services.  
9

10 28. The Trademark Examining Attorney assigned to Applicant’s application,  
11 concluded, on July 29, 2014, that there were no similar registered or pending marks, including  
12 Opposer’s marks, that would bar registration of Applicant’s mark. Accordingly, Opposer has  
13 failed to establish that Applicant’s mark is likely to cause confusion, mistake, or to deceive the  
14 public as to an association with Opposer’s marks.  
15

16 THIRD DEFENSE  
17

18 29. Opposer has failed to establish that Applicant’s mark would falsely suggest a  
19 connection between Opposer and Applicant as Applicant’s mark is distinctively different than  
20 the alleged uses claimed by Opposer.  
21

22 FOURTH DEFENSE  
23

24 30. Applicant reserves the right to rely on such other and further defenses as may be  
25 supported by facts to be determined through full and complete discovery and to amend his  
26 Answer to assert such defenses.  
27  
28

1           **WHEREFORE**, Applicant respectfully requests that this Opposition be denied and/or  
2 dismissed with prejudice, that the registration of Applicant's mark, as applied for in application  
3 Serial No. 86224809 be issued, and that Applicant be granted such other and further relief as the  
4 Board deems just and proper.

5  
6 Dated: November 7, 2014

7 Respectfully submitted,

8 By:

9  
10 Daniel S. Latter

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14 Beverly Hills, CA 90212

15 Telephone: 310.275.1844

16 Attorneys for Applicant and Defendant, Elliot Cohen  
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**CERTIFICATE OF ELECTRONIC MAILING**

I hereby certify that the foregoing Answer to the Notice of Opposition is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this

November 7, 2014.

By:

  
Daniel S. Latter



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on November 7, 2014, I caused a true and correct copy of the foregoing Answer to be sent via First-Class Mail, postage prepaid, to Opposer's Attorneys of Record, Drew M. Smith and Gabrielle A. Holley, Holley & Menker, PA, P.O. Box 1219, Sausalito, California 94966.

By:

  
Daniel S. Latter